IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.6455 OF 2004

Shri Ganpatrao Appaso Patil
& Ors. ....Petitioners.

V/s

Union of India & Ors. ....Respondents.

Mr. K.K. Singhvi i/b Mr. V.B. Rajure for Petitioners.

Mr. J.C. Satpute with Mr. R.C. Master for Respondent Nos. 1 and 2.

Mr. P.S. Dani for Respondent No.3.

Mr. M.L. Patil for Respondent No.5.

ALONGWITH

WRIT PETITION NO.6457 OF 2004

Shri Khema Hanmanta Kamble
& Ors. .....Petitioners.

V/s

Union of India & Ors. .....Respondents.

None for Petitioners.

Mr. J.C. Satpute with Mr. R.C. Master for Respondent Nos. 1 and 2.

Mr. P.S. Dani for Respondent No.3.

Mr. M.L. Patil for Respondent No.5.

CORAM : D.K. DESHMUKH &
V.M. KANADE, JJ.

DATE : 19th November, 2007.

P.C.:

1. Both these Petitions challenge the same order passed by the Respondent No.2. The facts that are material and relevant for deciding these two Petitions are that the Petitioner No. 20 is a Multi-State Co-operative Society. The term of the Board of Directors of that Society was to expire on 24th July, 2004. It is a common ground that the power to appoint an Officer to conduct the election of the Board of Directors of Petitioner No.20 - Society under Rule 19 of the Rules framed under the Multi-State Co-operative Societies Act, 2002 is vested in Respondent No.2. On 21st May, 2004 a letter was addressed to Respondent No.2 by the Society, pointing out therein that the term of the Board of Directors is to expire on 24th July, 2004 and, therefore, appointment of an Officer to conduct the election is necessary. It was further stated that the Board of Directors have decided to appoint Mr. R.P. Naik, a retired Regional Joint Director (Sugar) as a Returning Officer to hold the election. Respondent No.2

was requested to take appropriate action. A copy of the resolution was also enclosed with the letter. There was no response from Respondent No.2. It appears that the Returning Officer appointed by the Society, started the process of election. After the process of election was started, the Government of Maharashtra issued a Resolution dated 8th June, 2004, postponing the election of the Co-operative Societies upto 15th October, 2004. Some persons were claiming that because of this Government Resolution, elections of Petitioner No.2 - Society are also postponed. A letter dated 17th June, 2004 was addressed by the Society to Respondent No.2, pointing out that the term of the Board of Directors is to expire on 24th July, 2004 and, therefore, Mr. Naik has been appointed as the Returning Officer and that the Resolution of the Board of Directors, appointing Mr. Naik as Returning Officer has been forwarded to Respondent No.2 for suitable action. Then a reference was made to the Resolution of Government of Maharashtra dated 8th June, 2004 and guidance was sought from the Respondent No.2. The letter dated 17th June, 2004 from the Society was replied to by Respondent No.2 by letter dated 18th June, 2004. In that letter, the letter dated 17th June, 2004 was referred to and the Society was asked to go ahead with the schedule

of election as per law. The election programme, thereafter, continued. It appears that one Mr. Raju Shetti, who is the Respondent No.5, made a complaint dated 21st July, 2004 to Respondent No.2, stating therein that the Returning Officer Mr. Naik has illegally rejected the nomination papers of certain agriculturists and that he is illegally conducting the election. Therefore, the Respondent No.2 was requested to cancel the process of election being conducted by Mr. Naik. Pursuant to this complaint of Respondent No.5, a letter was sent by Respondent No.2 to the Chairman of the Petitioner No.20 - Society, enclosing a copy of the complaint and stating therein that the power of appointing the Returning Officer in relation to the Society is with the Registrar and that the Society has not approached the Registrar for appointment of the Returning Officer. The Society was asked to submit its comments. The Society submitted its comments by communication dated 23rd July, 2004. The Society pointed out that the name of the Returning Officer was selected by the Board of Directors and a copy of that Resolution was sent to the Registrar for further action. The Registrar did not take any action, did not communicate any thing and, therefore, the process of election was started. The Society relied on

the letter dated 18th June, 2004 from the Registrar to it and contended that, by that letter, the Respondent No.2 granted approval to the appointment of Mr. Naik as a Returning Officer. It was pointed out that now even Mr. Naik has resigned because of his ill-health and, therefore, the Society is taking steps to make alternative arrangement. The Respondent No.2, admittedly, without issuing any further notice to the Society, made an order dated 2nd August, 2004 cancelling the appointment of Mr. Naik as Returning Officer, also cancelled the process of election conducted by Mr. Naik and appointed Mr. S.M. Kashikar - Respondent No.4 as a Returning Officer. Writ Petition No.6455 of 2004 was filed challenging that order by the members of the Board of Directors of the Petitioner No. 20 - Society and the Society itself. By the time, the order cancelling the process of election was issued by Respondent No.2, some persons were declared elected unopposed as members of the Board of Directors of the Petitioner No.20 - Society. Those persons have filed Writ Petition No.6457 of 2004, challenging that order. In this Writ Petition, this Court made an interim order dated 6th August, 2004. By that order, the order of Respondent No.2 challenged in the Petition was stayed and it was directed that, as Mr Naik has already resigned as a Returning Officer,

further process of election should be conducted by Respondent No.4 who was appointed as Returning Officer by Respondent No.2. It appears that this interim order made by this Court was challenged before the Supreme Court in Petitions for leave to appeal No.16130-16131/2004. Those Special Leave Petitions were disposed of by order dated 23rd August, 2004 by the Supreme Court. The Supreme Court declined to grant special leave to appeal. However, the Supreme Court directed this Court to hear the Petitions expeditiously. Pursuant to the interim order passed by this Court, the process of election was completed by Respondent No. 4 - Mr. Kashikar and the result of election has been declared and the new Board of Directors, which was declared elected by Respondent No.4, has admittedly taken over and is presently functioning.

2. The learned Counsel appearing on behalf of Petitioners submits that the order of Respondent No.2, cancelling the process of election conducted by Mr. Naik is patently without authority of law. He submits that so far as the order of appointing Mr. Kashikar as a Returning Officer is concerned, that order has been accepted by the Society. This Hon'ble Court has also directed by its interim order that

Mr. Kashikar will hold election and, accordingly, he has held the election. According to the learned Counsel, therefore, there is no justification in this background to continue to enforce the order of Respondent No.2, cancelling the process of election conducted by Mr. Naik, the Returning Officer because there are no election disputes filed in relation to the election conducted by Mr. Naik initially and pursuant to the interim order of this Court by Mr. Kashikar. It is further submitted that the order has also been made by Respondent No.2 in breach of the principles of natural justice. The order was made on the basis of the complaint submitted by Respondent No.5. Perusal of a copy of the complaint submitted by Respondent No.5 shows that he nowhere makes a grievance that the Society had no power to appoint Mr Naik as a Returning Officer. It is further submitted that the Society has, in its letter dated 23rd July, 2004, relied on the letter dated 18th June, 2004 from Respondent No.2 and contended that, by that letter, the Respondent No.2 has approved the appointment of Mr. Naik as a Returning Officer and has asked the Society to go ahead with the election programme. It is submitted that, that contention has also not been properly appreciated by the Registrar. It is submitted that, in any case, before making the order, it

was necessary for Respondent No.2 to grant an opportunity of being heard to the Society as also to the candidates who were declared elected by Mr. Naik as members of the Board of Directors of the Petitioner No.20 - Society.

3. On behalf of Respondent Nos. 1, 2, 3 and 5, it is submitted that, according to Rule 19 of the Rules framed under the Act in relation to Petitioner No.20 - Society, it is only the Respondent No.2 who has the power to appoint a Returning Officer. Mr. Naik, admittedly, was not appointed as a Returning Officer by Respondent No.2. Therefore, his appointment as Election Officer was without authority of law and, therefore, the process of election conducted by him was also without authority of law and, therefore, according to them, the Respondent No.2 was within his powers in cancelling the process of election conducted by Mr. Naik. It is further submitted that the impugned order was made by Respondent No.2 after issuing the show-cause notice to the Society and, therefore, the principles of natural justice have been complied with. It is further submitted that the Supreme Court by its order dated 23rd August, 2004 has observed that while deciding the Writ Petitions finally, this Court will also examine the

legality and validity of the interim order also.

4. Now, if, in the light of these rival submissions, the record of the case is perused, it becomes clear that under Rule 19 in relation to the Petitioner No.20 - Society, it was the Respondent No.2 who had the power to appoint the Returning Officer. Admittedly, the Respondent No.2 did not make appointment of any Returning Officer till he made the order which is impugned in the Petition dated 2nd August, 2004.

Section 45 of the Multi-State Co-operative Societies Act lays down that the conduct of election to the Board of Multi-State Co-operative Societies shall be the responsibility of the existing Board. It also lays down that the election of the members of the Board shall be held by secret ballot in the prescribed manner. It further lays down that the election shall be held in the general meeting of the members of the Society. Sub-rule (1) of Rule 19 lays down that the election of members of the Board shall be conducted by a Returning Officer appointed by the Board in its meeting. Proviso to sub-rule (1) of Rule 19 lays down that in relation to certain class of Societies, including Multi-State Agricultural Processing Co-operative Society to which the

Petitioner No.20 belongs, the Returning Officer shall be appointed by the Central Registrar. Sub-rule (2) of Rule 19 lays down that the election of the members of the Board shall be conducted in the manner as specified in the Schedule attached to the Rules. Perusal of the Schedule shows that the duty is cast on the Board of Directors in Office to meet atleast 60 clear days in advance of the date of expiration of its term to determine the date, time and place for convening a general body meeting for the conduct of elections of its successor board. From the above provision, it is clear that it is the scheme of the Act that before expiration of its term, the outgoing Board of Directors has to hold the meeting and it has to determine the date, time and place of the meeting of the general body in which the election of the Board is to be held. Therefore, it follows that once the outgoing Board meets and fixes a date of the meeting of the general body in relation to the Society, Class of the Societies which are mentioned in the proviso to sub-rule (1) of Rule 19 of the Rules, the Registrar will have to nominate the Returning Officer so that the election can be held in the general body meeting of which date is fixed by the Board of Directors. In the present case, it appears that the term of the outgoing Board of Directors was to expire on 24th July,

2004 and, therefore, a meeting of the outgoing Board of Directors was held on 20th May, 2004 and, in that meeting, it was decided to convene the annual general body meeting for the purpose of holding elections for constituting the new Board of Directors on 24th July, 2004. By letter dated 21st May 2004, the Respondent No.2 was informed by the Society that because the term of the Board of Directors is to expire on 24th July, 2004, in the meeting of the Board of Directors held on 20th May, 2004 it is decided to convene the annual general body meeting on 24th July, 2004 for the purpose of holding elections. It was also informed that the Board of Directors has decided to appoint Mr. Naik as a Returning Officer. The copy of the Resolution passed by the Board of Directors in this regard was enclosed with the letter and the Respondent No.2 was requested to take appropriate action. There is no dispute before us that this letter was duly received by Respondent No.2. Now, in view of the scheme of the Act, it was for the Respondent No.2 either to agree with the Board of Directors and approve the appointment of Mr. Naik as Returning Officer or to inform the Board that he does not agree to the appointment of Mr. Naik as Returning Officer and appoint somebody else as Returning Officer for holding the election. The Respondent

No.2, in view of the scheme of the Act and the Rules, was to act immediately because the date of the annual general body meeting in which elections are to be held was fixed by the Board of Directors as 24th July, 2004. It appears that in the absence of any response from Respondent No.2, Mr. Naik initiated the process of election. While the process of election was set in motion by Mr. Naik, the letter dated 17th June, 2004 was written by the Society to the Respondent No.2. The material part of that letter reads as under:-

> "Ours' is a Multi State Co-operative Society, governed under the Multi State Co-operative Societies Act, 2002 and Rules thereunder as well as Schedules under the said Rules. Since the tenure of the Existing Board of our Society expires on 24th July, 2004. Therefore we have taken certain steps towards the starting of the Election Process, we have called Board Meeting on 20th May 2004 (i.e. clear sixty days before the tenure of the expiry of Existing Board) and decided to call the General Meeting on 24th July, 2004 at 01=00 AM at our Karkhana Site for Election of our Board of Directors for the period of Five Years. Besides this we have appointed MR. R.P. NAIK, Kolhapur, Retired Regional Joint Director (Sugar) from Maharashtra State as a

RETURNING OFFICER to carry out the Election Process. Both these Resolution No.2 and 3 passed in the Board of Directors Meeting held on 20th May 2004 are submitted to your Honour vide our letter No.1521/ADM/BOD/ELECTION/CSMS/2004 dated 21st May, 2004. Also myself discussed this issue with you on phone on 16th June 2004.

However, we would like to bring to your kind notice that, the Government of Maharashtra have recently issued GR dated 8th June 2004 and postponed the due Elections of Co-Operative Societies in the State of Maharashtra upto 15th October 2004 or upto completion of Assembly Elections.

In view of the the facts stated above, ours is a Multi State Co-Operative Society governed under your able guidance, as we have started our Election Process, we require your immediate advise and guidance in the matter, which shall beneficial to our Society. Therefore, your Honour is earnestly requested to guide us in the matter for further process of our Board of Directors election and oblige."

It is clear from the above quoted letter that the Society has, in no uncertain terms, informed the Respondent No.2 that Mr. Naik has

been appointed as a Returning Officer by the Board of Directors and this fact has been communicated to the Respondent No.2 by the letter dated 21st May, 2004. The Petitioner also informed that this was also discussed with Respondent No.2 on telephone on 16th June, 2004. In view of the Government Resolution postponing the election, guidance was sought from the Respondent No.2. This letter was replied to by the Respondent No.2 by his communication dated 18th June, 2004. The material part of that letter reads as under:-

> "I am directed to refer to your reference No.02790/ADM-/GOI/Elen-GM/2004, dated 17.6.2004 regarding the elections to the Board of Directors of the Society enclosing therewith a Notice issued by the Govt. of Maharashtra dated 8.6.2004 and to say that Shree Datta Shetkari Sahakari Sakhar Karkhana Ltd., Shirol, is a Multi State Co-operative Society governed under the provisions of the MSCS Act, 2002 and therefore, the said Notice of the Government of Maharashtra does not apply to the Society. The Society is advised to carry out the election process as scheduled for the elections of the new Board of Directors under the bye-laws of the society as registered by the Central Registrar of

> Cooperative Societies and the provisions of the MSCS Act, 2002 and the rules framed thereunder."

Perusal of this clause shows that the Respondent No.2 does not dispute that he has received the letter dated 21st May 2004 from the Society, informing him that Mr. Naik has been appointed as a Returning Officer. He also does not deny that this issue was discussed with him on telephone on 16th June, 2004. Perusal of the letter dated 17th June, 2004 and the reply dated 18th June, 2004 leaves one in no manner of doubt that the appointment of Mr. Naik as a Returning Officer was approved by Respondent No.2. In the reply quoted above, had the appointment of Mr. Naik not been approved by Respondent No.2, he would have pointed out that the Society has no power to appoint Mr. Naik as a Returning Officer and that, therefore, the Society cannot go ahead with the election programme. Not only that the Respondent No.2 does not say so, on the contrary, he asked the Society to go ahead with the process of election initiated by Mr. Naik. In our opinion, therefore, from the correspondence referred to above, it can be safely inferred that though the appointment of Mr. Naik was made by the Society, that appointment was approved by the

Respondent No.2 and, therefore, we find that what is observed in the impugned order that the letter dated 18th June, 2004 was only in relation to the GR issued by the State Government is not right. We find that there is considerable substance in the defence put up by the Petitioner No.20 - Society that the Respondent No.2 had directed the Society to go ahead with the election programme initiated by Mr. Naik. In our opinion, therefore, the Respondent No.2 was not justified in setting aside the process of election initiated by Mr. Naik. By the time, appointment of Mr. Naik was cancelled by Respondent No.2, Mr. Naik himself had voluntarily resigned and it is an admitted position that the further process of election has been conducted by Mr. Kashikar who was appointed by Respondent No.2 himself. It is true that Mr. Kashikar has continued the process of election initiated by Mr. Naik but we have not been pointed out any thing that would show that there was any illegality committed by Mr. Naik in conducting the process of election, apart from the fact that his appointment was not legal. This has to be considered in the light of the admitted position that the Respondent No.5 or anybody else has not filed any dispute, challenging the election declared by Mr. Kashikar pursuant to the interim order passed by this Court. The

persons who have been declared as elected also may not be before the Court. In our opinion, the appointment of Mr. Naik as a Returning Officer cannot be said to be wholly without authority of law. By the time the respondent No.2 made the order cancelling the appointment of Mr. Naik as Returning Officer, he had already resigned. There is no challenge to the appointment of Mr. Kashikar as Returning Officer. The limited area of debate is, whether the Respondent No.2 was justified in cancelling the process of election carried out by Mr. Naik. In our opinion, before making an order cancelling the process of election carried out by Mr. Naik, the Respondent No.2 should have considered, whether, Mr. Naik has committed any illegality in conducting the process of election. The order cancelling the process of election conducted by Mr. Naik was made on the complaint of Respondent No.5. Perusal of that complaint shows that there are merely allegations made that Mr. Naik has rejected some nomination papers illegally. But there are no documents produced, no material is produced in support of the allegations. The respondent No.2 also does not find that any nomination papers are illegally rejected by Mr. Naik. What is significant is that there are no election disputes filed pointing out any illegality committed by Mr. Naik in conducting the

process of election. The Respondent No.2 was also not justified in cancelling the process of election without issuing proper show-cause notice to the Society and to the candidates who were declared elected. The candidates who were declared elected pursuant to the election programme framed by Mr. Naik were entitled to be heard before their election was cancelled. Admittedly, no notice was given to them. Perusal of the notice given to the Society shows that, in that notice, the Society has not been asked to show-cause why the appointment of Mr. Naik should not be cancelled and the process of election conducted by him should also not be cancelled. Therefore, the show cause notice also does not comply with the requirement of principles of natural justice. Taking an over all view of the matter, we find that, ultimately, elections have been completed by the Returning Officer appointed by Respondent No.2. There are no disputes filed, pointing out any illegality in the process of election conducted by Mr. Naik. The result of the election conducted by Mr. Kashikar has been declared in the year 2004. The Body elected in this election is presently in Office and, therefore, in our opinion, it would be appropriate to set aside the order of Respondent No.2 only to the extent that it cancels the process of election conducted by Mr. Naik.

The rest of the order of Respondent No.2 has been complied with inasmuch as Mr. Kashikar, a Returning Officer, appointed by Respondent No.2, has completed the process of election. In our opinion, therefore, the following order would meet the ends of justice.

5. The order impugned in these Petitions is set aside only to the extent that it declares the appointment of Mr. Naik as a Returning Officer and the election process conducted by him as null and void. Rule is made absolute accordingly. No order as to costs.

6. Since both the Writ Petitions are disposed of, Civil Application No.2229 of 2006 in Writ Petition No.6455 of 2004 and Civil Application Nos. 2230 of 2006 and 2231 of 2006 in Writ Petition No.6457 of 2004 do not survive and the same are also disposed of.

(D.K. DESHMUKH, J.)

(V.M. KANADE, J.)